SUPREME COURT OF THE UNITED STATES.

No. 345.

THE UNITED STATES, APPELLANT,

vs.

JONATHAN P. BURTON.

APPEAL FROM THE COURT OF CLAIMS.

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1 To the Judges of the Court of Claims:

The petition of Jonathan P. Burton, of Massillon, in the State of Ohio, respectfully sheweth:

1. That heretofore, to wit, on or about the last day of August, one thousand eight hundred and sixty-one, your petitioner, at the city of Cincinnati, in said State, contracted with the United States for the sale and delivery to them, subject to inspection, of three hundred horses for army purposes, for which the United States agreed to pay him the sum of one hundred and thirty dollars each, and one hundred and twenty-five dollars each, according to the inspection they should bear, which was to be made by the agent of the United States.

2. And your petitioner avers, that he proceeded to fulfill said contract, on his part, by the delivery, heretofore, to wit, in the month of September, eighteen hundred and sixty-one, of three hundred horses under it, which the United States caused to be inspected, and they accepted and received the same under said contract; one hundred and fifty-one of which were received on inspection at Cincinnati, in said State, at the rate of one hundred and thirty dollars each, and one hundred and forty-nine were inspected and received at Massillon aforesaid, at one hundred and twenty-five dollars each; all of which were accepted and used by the United States in the public service.

3. And your petitioner avers, that there remains due and unpaid to him from the United States, on account of the said horses so sold and delivered to them, over and above all payments made to him down, and above all just set-off, the sum of three thousand and twenty dollars, with interest thereon from the day of the delivery of the said horses.

4. Your petitioner further avers, that he has caused due demand to be made upon the proper department, and that such payment has been refused.

5. He further avers, that he is the sole owner of the claim above set forth, and that he prosecutes the same for his own benefit.

6. Your petitioner avers, that he is a citizen of the United States, and has at all times borne true allegiance to the government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragemet to rebellion against the said government.

7. Your petitioner prays this court to adjudge and determine that the United States pay him the sum of three thousand and twenty dollars, with interest thereon from the date of the delivery of the said horses, to wit, the month of September, one thousand eight hundred and sixty-one.

JONATHAN P. BURTON.

R. H. GILLET,
Solicitor for Claimant.

STATE OF OHIO, *County of Stark, ss:*

Jonathan P. Burton, the foregoing petitioner, being duly sworn, doth depose and say, that there has been no assignment by him of the demand set forth in the foregoing petition, or of any part thereof, or of any interest therein, and that he is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and he believes the facts stated in the petition are true.

JONATHAN P. BURTON.

Subscribed and sworn before me, this 30th day of September, 1863.

[SEAL.] ROBERT H. FOLGER,
Notary Public.

2 In the Court of Claims.

October term, 1864.

JONATHAN P. BURTON
vs.
THE UNITED STATES. } No. 1,951.

And now come the United States, by Charles Gibson, their Solicitor, and say that they are not indebted unto the said claimant in the said sum of $3,020, or any part thereof.

Jan'y 6, 1864.

CHARLES GIBSON,
Solicitor for U. S.

3 In the Court of Claims.

JONATHAN P. BURTON
vs.
THE UNITED STATES.

And now, to wit, 6th May, 1867, the court, upon due consideration of the premises, do find in favor of the claimant, and do order, adjudge and decree that the said Jonathan P. Burton have and recover of and from the United States the sum of three thousand and twenty dollars, ($3,020 00.)

BY THE COURT.

Court of Claims.

4 JONATHAN P. BURTON
vs.
THE UNITED STATES. } No. 1,951.

The United States, by E. P. Norton, its Solicitor, hereby makes application to the honorable Court of Claims, for an appeal, of the case of Jonathan P. Burton *vs.* The United States, to the Supreme Court of the United States.

E. P. NORTON,
Solicitor for the U S.

Filed in the clerk's office, June 10, 1867.

5 At a Court of Claims held at the Capitol, in the city of Washington, on Wednesday, the 26th day of June, A. D. 1867.

JONATHAN P. BURTON
vs.
THE UNITED STATES. } No. 1,951.

Mr. Norton, the Solicitor, submitted a petition for the allowance of an appeal in this case, from the judgment entered therein on the 6th of May last, to the Supreme Court of the United States, whereupon it was ordered, that the said petition be allowed.

6 Court of Claims.

JONATHAN P. BURTON
vs.
THE UNITED STATES.

The court find the following facts to be proved and established:

1. On the 10th day of October, 1861, Major General John C. Fremont, commanding the military department known as the "Department of the West," and acting on behalf of the defendants, appointed one John E. Reeside inspector of horses for the said dep't, and at the same time appointed him also a purchasing agent of the defendants, it being also understood and agreed, that the said Reeside should be responsible that every animal passed by him should be equal in value to the price paid, and that the defendants should pay to him for his said services and responsibility a commission of two and one-half per cent. upon the price paid for the horses so purchased, which agreement was set forth in the words following:

HEADQUARTERS WESTERN DEPARTMENT,
ST. LOUIS, *August* 11, 1861.

SIR: Having confidence in your knowledge and experience, I hereby authorize and commend you as inspector of horses for this department, holding you responsible that every animal passed by you shall be equal in value to the price paid. You will be allowed $2\frac{1}{2}$ per cent. commission.

JOHN C. FREMONT,
Maj. Gen'l Comd'g.

To JOHN E. REESIDE, *Inspector of horses.*

HEADQUARTERS WESTERN DEPARTMENT,
ST. LOUIS, *August* 10, 1861.

JOHN E. REESIDE, *Inspector of horses:*

SIR: You will proceed, without delay, to Cincinnati, and purchase, cause to be purchased, or inspect when purchased by other contractors, two thousand horses for the service of the army in this department.

You will not pay, on an average, over one hundred and thirty dollars each, at such places as you may name as places of inspection.

The horses are required to be suited to the most active field service, not too heavy for activity, nor too light for cavalry; of approved blood, so far as the price will obtain such.

JOHN C. FREMONT,
Maj. Gen'l Comd'g.

7 2. Under the said appointment of Maj. Gen'l Fremont, the said Reeside, acting for and on behalf of the defendants, entered into an agreement to purchase from the claimant one hundred and fifty-one horses at the agreed price of $130 each.

8 3. Under, and in pursuance of the said agreement, the claimant delivered to the said Reeside, acting on behalf of the defendants, one hundred and fifty-one horses, which were duly inspected and branded by the said Reeside, and by him were turned over and delivered to various quartermasters of the defendants, who received and accounted for the same, as for other property of the United States purchased by, or turned over to them, and that the said Reeside, and the said quartermasters, gave to the claimants the usual certificates and vouchers, which were in the form following:

The United States, to J. P. Burton, Dr.

Sept. 21, 1861.	To 151 horses, at $130 each	.....	$19,630 00
	do 110	.....	16,610 00

I here certify that I have instructed and approved the above number of horses for J. P. Burton, contractor for purchasing horses for the army of the U. S., in the West. Department, and also certify that the above account is correct and just.

J. E. REESIDE,
Inspector of horses for West. Dep't, U. S. A.
CINCINNATI, O., *Sept.* 21, 1861.

I certify that the above account is correct and just, and that the articles have been accounted for on my property returns for the quarter ending on the 30th of September, 1861.

T. D. HASTINGS.
Q. M. 4th O. V. Cav.

9 And the said horses, thereupon entered into the use and service of the defendants, by being used in their military service.

4. The value of the said one hundred and fifty-one horses, so sold and delivered as aforesaid, was one hundred and thirty dollars per head, amounting in the whole to the sum of $184,990.

5. In October, 1861, and after the said horses had been delivered as described in the third finding aforesaid, the defendants refused to pay the price thereof to the claimant, and referred the certificates and vouchers described in the said third finding, to a military commission, appointed by the Secretary of War, known as the "Davis,

Holt, and Campbell Commission;" and the said commission thereupon deducted the sum of $20 per horse from the agreed or contract price of the said horses, and before delivering to the claimant his said vouchers, required him to sign and execute a certain instrument or agreement purporting to release to the defendants the said amount so deducted, to wit, the sum of $20 on every horse sold, which release was attached to a schedule of claims of various persons, and was in the words following:

"The undersigned acknowledge to have received the vouchers referred to and described below, which, when paid, will be in full of all demands against the United States on account of their respective claims set opposite to their several names."

The claimant subsequently received the amount allowed upon his claim by the said commission, to wit, the sum of $110 per horse for the said one hundred and fifty-one horses, and at the same time gave to the defendants the usual voucher or receipt, in the form following:

Received at St. Louis, Mo., the 7th of May, 1862, of Major Robert Allen, Quartermaster United States Army, the sum of sixteen thousand six hundred and ten dollars and no cents, in full of the above account.

J. P. BURTON.

6. The balance of $20 per horse, on each of the said one hundred and fifty-one horses, amounting to the sum of $3,020, has never been paid by the defendants to the said claimants.

7. At the time of the appointment of the said John E. Reeside, set forth and described in the first finding of facts, and at the time of the sale and delivery of the horses mentioned and described in the second finding of facts, the public exigencies arising out of the war of the rebellion required the immediate performance of the services of the said Reeside, and the immediate delivery of the said horses by the claimant, and that the said services and the said articles were procured by contract, at the places and in the manner in which such services were usually engaged and such articles were usually bought and sold between individuals.

And upon the facts aforesaid the court find and determine the following conclusions of law:

1. The agreement made by Major General Fremont with John E. Reeside, mentioned and described in the first finding of fact, was illegal and void and did not bind the defendants, nor constitute the said John E. Reeside the purchasing agent of the United States.

2. The express contract entered into by Reeside in behalf of the defendants with the claimant, mentioned and described in the second finding of facts, was illegal and void, and was not the contract of and did not bind the defendants.

3. The delivery to and acceptance of the horses, mentioned and described in the third finding of facts, by the defendants as set forth in the said finding, constituted an implied contract or agreement upon which the claimant is entitled to recover the just and reasonable value of the property so sold and delivered, after deducting therefrom all payments made on account thereof by the defendants.

14 4. The agreement or release mentioned and described in the fifth finding of fact was illegal and void, and does not bar the claimant from recovering the amount or balance due from the defendants.

5. The claimant is entitled to recover the balance of $15 per horse on each horse sold and delivered as aforesaid, amounting to the sum of $21,345, as set forth in the sixth finding of fact.

15 In the Court of Claims.

JONATHAN P. BURTON
vs.
THE UNITED STATES. } No. 1,951.

I, Samuel H. Huntington, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and of the final judgment of the court thereon; of the application of the Solicitor of the United States for the allowance of an appeal, and of the order of the court allowing the same; and of the finding of the facts by the court, and the conclusion of law on said facts, on which the court found its judgment.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 6th day of December, A. D. 1867.

[SEAL.] SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

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In the Supreme Court of the United States.

THE UNITED STATES, *Appellant.*
vs
SAM'L J. MORGAN. } *No.* 191.

SAME
vs.
JONATHAN P. BURTON. } *No.* 192.

SAME
vs.
OLIVER H. GEFFROY. } *No.* 193.

SAME
vs.
BENJAMIN HIGDON. } *No.* 197.

BRIEF OF CARLISLE & MCPHERSON, FOR APPELLEES.

These are appeals from judgments of the Court of Claims.

THE CASES,

which are, *mutatis mutandis* identical, are presented by the finding of the Court as follows:

1. John E. Reeside a civilian was in August, 1861, directed by General Fremont to purchase, caused to be purchased, and inspect when purchased, large number of horses required for his command in Mississippi, and to fix the prices for the same not exceeding an average of $130, the order at the same time holding him responsible that the horses purchased should equal in value to the price paid.

2. Reeside purchased and inspected horses offered by the claimants, and fixed the price.

3. The horses so purchased entered into the use and service of the United States, and were used in the military service.

4. The exigencies of the military service arising out of the rebellion required the immediate performance of the service of Reeside, and the immediate delivery of the horses, and they were procured by contract at the place, and in the manner in which such services were usually engaged, and such articles bought and sold between individuals.

5. The said horses were worth the price so fixed by Reeside.

6. The claimants having received certified Quartermasters vouchers for the animals furnished, presented the same to the Holt-Davis-Campbell commission, who allowed a less price than that agreed on, and required the claimants on receiving back these vouchers to execute a receipt in the form set forth in the record expressed to be in full of all demands.

7. The express contract made by Reeside—a private person and not a Quartermaster—was by the Court held to be unauthorized and void, but being satisfied upon the proofs of the facts above stated, and that the horses were worth the price agreed to be paid and that they had been duly received into the use and service of the United States by the authorized officer thereof, the Court held that there was an implied contract by the United States to pay such value. and the claimant having received a less sum by direction of the Holt, Davis, Campbell commission, judgments were rerendered in favor of the claimants for the respective balance.

But two questions of law arise upon these records.

I. Whether an implied contract exists by reason of the facts so found by the Court, to pay the fair value of the horses sold and delivered to and actually used by the United States in the military service.

II. Whether receipts signed by the respective claimants shown by record and found by the Court, bar any further recovery by them respectively.

I.

Upon the first point we deem it unnecessary to cite any authority.

II.

Upon the second point we refer, and ask the attention of the Court to the concurring opinion of Chief Justice Casey, of the Court of Claims upon this question, and to the authorities cited by him, what we extract from the reports of the Court of Claims, in 2 N. & W., p. 54:

"It is finally urged upon us that though these contracts may have been originally valid and binding, the claims made upon them are barred by the proceedings under the Holt-Davis commission, and the acceptance by several of these claimants of the amounts awarded them by that board, and giving receipts in full for their entire claims. These facts have been pressed upon us earnestly in various aspects. 1st. As an arbitrament and award; 2d, as accord and satisfaction; 3d, as a compromise of doubtful and disputed rights.

1. "It has no feature whatever of a submission or arbitration. The commission was an *ex parte* one; constituted not to decide upon the validity and amount of the claims, but as to the facts and circumstances surrounding the transactions out of which they arose. It was intended to elicit facts instead of reaching conclusions or producing final results. Arbitrament always implies mutual submission of the dispute. In our case it is totally wanting. But if there had been even a concurrence in the submission by the claimants it would still be unavailing; for, to render an award binding on either party, it must be equally obligatory on both. The Secretary of War had no power to submit the rights of the United States to the arbitrament of private

and unofficial persons. He could only adjust the claims against his department through the agencies constituted by the law, or through the judicial courts of the nation. There was no law authorizing him to make and constitute such a tribunal. Hence their decisions and reports, whatever light they may have cast upon the transactton or information imparted to the department and the Secretary, had no binding force and efficacy. None upon the United States, because no law of Congress had authorized their acts; none upon the claimant as an award, because of the absence of all reciprocal obligation or mutuality. Congress alone has the power to submit the rights of the Government to arbitration, or, at least, to prescribe the mode and manner in which it shall be done. (See *Kendall* v. *The United States*, 12 Peters, 611; also, *DeGroot* v. *United States*, decided in this Court at this term.) As an award, if otherwise good, it was not binding on the United States when made, and of course not on the claimants. That Congress impliedly ratified the finding, by directing the amounts found due by the commission to be paid, could not alter the case, as it could not relate back and make that binding on the claimants which before was simply void as to both. But it never was regarded by the Secretary of War, Congress, or the claimants, in any other light than as an *ex parte* affair, adopted as the best means that suggested itself of getting full and accurate information to guide the future action of the department in adjusting or contesting the claims.

"But let us test this question a little closer, Suppose this commission, instead of deducting a large sum from the contract prices had added the same amount to them, and these suits instead of being brought upon the contracts were upon such awards, and the position of the parties be thereby reversed, the United States defending under the contracts instead of now under the award, how would the matter stand? Could the award in such case be sustained? Clearly not. And this answers the whole argument; because, if

available as a defence now, it would in the other case be equally so as a ground of suit.

2. "To support an allegation or plea of accord and satisfaction there must be some new consideration moving from the party who sets it up. The payment of part of a debt, in consideration of the creditor relinquishing the residue, where the debt is due at the time, will not support the plea or averment. (*Warren* v. *Skinner*, 20 Conn. Rep., 559, 1 Bac. Ab., 43.) To sustain a release not under the seal a consideration of some kind, apart from the original indebtedness, is necessary; and without such consideration it is *numdum pactum* and void. In support of this principle there is no overflowing flood of authorities, without sufficient counter-current to make an eddy in the stream, or a ripple on its surface. The case of *Wentz* v. *De Haven*, (1 Sergt. and K., 312,) cited by the solicitor, which intimated a contrary doctrine, has been repeatedly overuled by the same court which inadvertently made it. (*Whitechill* v. (*Wilson*, 3 Penn. Rep., 405; *Campbell's estate*, 7 Barr, 101; *Kennedy* v. *Barr*, 445; *Kidder* v. *Kidder*, 9 Casey, 268.) There is scarcely a State in the Union where it has not been repeatedly decided that a receipt in full is but *prima facie* evidence of payment; and that, as between the parties to it such receipt may be explained, varied, or contradicted by parol. It is equally well settled that part payment of a debt is not sufficient consideration to support a release of the residue, or an agreement not to sue for it. To cite even a tithe of the cases in which this doctrine is maintained and, enforced would swell this opinion beyond due bonds. A few will suffice. The leading case, upon which the others are all grounded, is Pinnel's case. (5 Rep., 110.) In that case "it was resolved by the whole court that payment of a lesser sum on the day, in satisfaction of a greater, cannot be any satiafaction for the whole, because it appears to the judges that, by no possibility, a lesser sum can be satisfac-

tion to the plaintiff for a greater sum." "When the whole sum is due, by no intentment the acceptance of a parcel can be satisfaction to the plaintiff."

"The case will be followed and the principle sustained by Pratt, C. J., in *Cumber* v. *Wane*. (1 Strange, 426.) And again, more explicitly, by Lord Ellenborough, in *Fitch* v. *Sutton*. (5 East., 232.) "But it cannot be pretended that a receipt of part only, though expressed to be in full of all demands, must have the same operation as a release. It is impossible to contend that acceptance of £17 10*s*. is an extinguishment of a debt of £50. There must be some consideration for the relinquishment of the residue; something collateral to show a possibility of benefit to the party relinquishing his further claim; otherwise the agreement in *nudum pactum*. But the mere promise to pay the rest when of ability put the plaintiff in no better condition than he was before. It was expressly determined in *Cumber* v. *Wane* that exceptance of a security for a lesser sum cannot be pleaded in satisfaction of a greater. That decision is directly supported by the authority of Pinnel's case, which never appears to have been questioned."

"For this ruling there has scarcely been a departue up to the present day in England, where it is firmly established. And this same principle has been followed, as already stated, in nearly every State in the Union, its sound sense and justice commending it to the judgment and conscience of courts everywhere and at all times. A few of the American cases are here referred to, which will be found to sustain the doctrine to the full extent to which I apply it in this case: *Sigourney* v. *Sibles*, 21 Pick., 102; *Miller* v. *Hemgler*, 5 W. and S., 486; *Lawrence* v. *The Schuylkill Navigation Company*, 4 W. C. C.,, 526; *Moize* v. *Miller*, 1 *ibid.*, 328; *Hope* v. *Johnson*, 11 Rich. L., 199; *Kidder* v. *Kidder*, 9 Casey, 268; *Pabodie* v. *King*, 12 John., 426; *Cushing* v. *Wyman*, 44 Maine. 121; *Ryan* v. *Rand*, 6 Fost., (N. H.,) 12; *Frink* v. *Balton*, 15 Il. Rep., 343; *Jones* v.

Rickets, 7 Md. Rep-, 109; *Hardy* v. *Coe*, 5 Gill., 189; *Bailey* v. *Day*, 26 Me., 88; *Miller* v. *Holden*, 18 Vermont. 337; *Mason* v. *Peters*, 4 *id.*, 101; and *Wheeler* v. *Wheeler*, 11 Vt., 60.

'A careful view of the English and American authorities will demonstrate, beyond a controversy, that there is no case of recognized and established authority that contravenes the principle we apply in this case. Whenever the rule and the principle have appearently been departed from, it will be found that the debt of demand was uncertain and unliquidated. Whenever, as in our cases, the amount of the claim or debt is definate and certain, the principle is invariably applied. In such cases as are unsettled, where the parties come together and agree to settle and liquidate the demand at a certain amount, and it is paid and received in full satisfaction, in good faith, it will be sustained as accord and satisfaction, or a compromise. In the case we are considered there is nothing for such a doctrine to operate upon. They are not open, unadjusted, unsettled claims that the claimants held. They were regular official vouchers, given by tne quartermasters, stating in words and figures the amount due the parties, or were distinct written contracts specifying precisely the amount to be paid for materialy furnished or services performed. So these claims are treated by this commission. The amount of vouchers of the claimants. or of their contracts, is plainly set down. From that amount a certain sum is arbitrarily deducted, and the proposition made, "Take this less sum in satisfaction for the whole, or get nothing.'" It is taken and a receipt in full given, or an agreement signed not to sue for residue. Now where is the consideration for this promise? The demand was specific. The United States has so treated it in every instance. What the claimants received was admitted to be due to them, inrespective of this arrangement. Where, then, is the lates spark or title of consideration to support and sustain these preterded releases, or accords and satisfaction?

Without regard to the manner in which they were wrung from the fears or necessities of the claimants, they are as bald and naked promises as could be presented to the consideration of a court. It is not pretended there was any new consideration. There was no change of time, place, or mode of payment. It was simply an agreement to receive a part in place of the whole of a specific liquidated claim, As such it is entirely without any binding force.

3. "The facts set up, it is alleged, if they do not constitute an award, a release, or accord, they amount to a compromise of a doubtful and disputed right. Where a party voluntarily and without any oppression or undue influence being exercised upon him by the other, relinquishes a part of a disputed claim and accepts the less sum in discharge of the whole, it is binding on him as a compromise. It is puite clear that where a dispute arises between two parties as to the validity or amount of a claim, and they in good faith mutually agree to pay and receive a certain sum, or such sum as a third party shall award, and it is voluntarily paid and accepted in discharge of the whole claim, that it is a final and binding compromise which neither will be permitted to gainsay or reopen. But such are not the facts of the cases we are considering. To make an agreement of compromise effectnal it must be fair, open, and free from undue influence, oppression, and extortion. The parties must stand upon equal grounds. Not so in our cases. This alleged compromise commences and has its inception in the appointment by the War Department, without the knowledge and consent of the claimants, of this one-sided commission. Their cases are taken up either voluntarily or by compulsion. Where the party does not submit his vouchers, his claim is seized upon by the records of the quartermaster's department. The amounts are arbitrarily fixed, their papers are withheld, and they are reminded that unless they take what is offered they can neither have their papers nor the money that is admitted to be due to them. This is the com-

promise. They agreed to it because they were compelled to do so.

"It is admitted that the claimants had no voice in the selection of these commissioners, who are now called arbitrators. They did not, either before or after the report was made, agree that they should act as referees or arbitrators on their rights. They entered into no stipulation to abide by the report or award. They did more—they protested agains the injustice of the decisions, and the sequestration of their vouchers and papers. It is admitted the commissioners had no right, in any view, to withhold the papers, least of all for the purpose of compelling an unwilling submission to their finding. Yet they did withhold them, and for the very purpose avowed, and apparent of forcing an acquiescence in their decision. They succeeded in obtaining that submission and acquiescence. Is this arbitrament and award? Is this accord and satisfaction? Is it compromise? The rack and torture often produced similar submissions—the like compromises—but little less odious, and not a whit more unlawful.

"It was at one time maintained that duress of the person was necessary to avoid an agreement, and that duress or detention of goods would not have that effect. That doctrine is now exploded. The case of *White* v. *Heylman* (10 Casey, 142) closely resembles the one in hand. There Heylman refused to deliver to White certain deeds and paders belonging to the latter, until he would pay him $300 in money, and give his note for two hundred more. The action was on that note. Mr. Justice Read says: "Neither the payment of the cash nor the giving of the note was voluntary, but both were extorted from the defendant, and came within that class of cases in which money illegally claimed and paid has been recovered back, where goods, deeds, or papers have been wrongfully withheld until the money has been paid."

"In *Ripley* v. *Gelston* (9 John's Rep.,201) it was held that duties illegally exacted by a collector of customs before he

would deliver the goods could be recovered back from him, although he had paid the money over into the public treasury. So in *Clinton* v. *Strong*, (19 John, 370,) of costs illegally exacted by an officer.

"In *Whetler* v. *Smith* (9 How., 55) the Supreme Court of United States set aside an alleged compromise, on the ground that the party setting it up had taken an unfair advantage of the other's necessities. Mr. Justice McLean says, on pages 82, 83: "But in making the compromise the parties did not stand on equal ground. The necessities and character of the complainant were well known to the executors."

"In *Elliott* v. *Swartwout*, (10 Peters, 137) the same court holds that duties or taxes illegally exacted by an officer, before he would deliver the parties' goods, were not voluntary payments, and could be recovered back. (*Hearsey* v. *Pruyn*, 7 John, 179.)

"In *Ashmole* v. *Wainwright* (2 Queen's Bench Rep., 837) a common carrier refused to deliver the plaintiff his goods until he paid a sum in excess of the legal freight. He paid the sum demanded, protesting against it as exhorbitant. The court held he could recover it back in assumpsit.

"So in *Wakefield* v. *Newborn*, (6 Queen's Bench, 281,) an attorney of a martgagee had possession of certain title deeds to which the mortgagor was entitled. The attorney refused to deliver up these papers to the mortgagor until he would pay certain costs and expenses, for which he was not legally bound, and the attorney had no right to demand. He paid the money, got possession of his papers, and he brought suit to recover it back. Lord C. J. Denman said; "the evil of allowing extortion, by means of a wrongful detention of goods, would be great; and the wrongdoer has no right to complain when he is compelled to restore money which he was warned he had no right to exact. The case is wholly different from that class of cases where the parties have to a voluntary settlement of their concerns, and have chosen

to pay what is fouud due." (*Cartwright* v. *Rawley*, 2 Esp., 723.) The same principal is decided and maintained with great clearness and force by Chief Justice Tindal, in *Parker* v. *The Great Western Railroad Co.*, (7 Mann and Gr., 253) Also, by the superior court of New York city in the case of *Harmony* v. *Bingham*, (1 Dues, 229,) and by the Court of Appeals in 2 Kern, 99.

"In *Shaw* v. *Wood* (7 Barn. & Cress., 73) the property illegally withheld were certain policies of insurance, upon which the party holding them claimed a lien. The owner, to get his papers, paid the amount, and sued to recover it back. The court repudiated the idea of it being a settlement or compromise. It was simply an illegal extortion. *S. P. Astley* v. *Reynolds*, (2 Strange, 915) *Atlee* v. *Backhouse*, (3 M. & W., 643.) The same doctrine was held and distinctly announced in the case of *Oats* v. *Hudson*, (5 E. L. and E. Rep., 469.)

"In the case of *Astley* v. *Reynolds* (2 Str., 915,) the court says: "We think, also, this payment by compulsion; the plaintiff might have such an immediate want of his goods that an action of trover would not do his business. Where the rule *volenti non fit injuria* is applied, it must be where the party has his freedom of exercising his will. To the effect is *Chase* v. *Dwinel*, (7 Green, 134,) and numerous other cases.

"The arguments relied on here, that the claimants need not have acquiesced in the demands made by the commissioners—that they could have sustained suits in this court without having possession of their papers, is the old defence that has been urged in all the cases cited and overruled in each of them successfully. In all such cases the party can maintain trover and conversion for his goods, and determine for his title deeds or papers. but that fact does not vary the principle. The other party shall not be permitted to take advantage of, and reap a benefit from his own wrong. It is a great fallacy to suppose that to render a promise or agree-

ment, extorted by the detention of goods or papers, unavailable and void, the other party must have been without any other remedy. The doctrine I am contending for, and the cases cited in support of it, do not rest upon any such grounds, but upon the illegality of the means by which the promise was obtained, or the agreement exacted. To present to a man the alternative of paying an extortionate sum, or of relinquishing a legal right on the one hand, or be deprived of the rightful possession of his property, or obtain it through the delay, vexation and expense of a lawsuit on the other, the law holds to be unconscionable and unlawful, and renders every promise and agreement extorted in that way wholly null and void. In our cases it is not disputed that the claimants had a right to the possession of their papers; nor was it disputed that they were entitled to be paid the amounts which they afterwards received. And in view of these facts, we are called upon to decide upon the legelity and justice of withholding these papers, and the money due them, until they should agree to relinquish all claim to such part as the United States saw fit to dispute. This question has never been decided but one way by any respectable court in Christendom, holding common honesty and fair dealing require that a party shall be relieved from any bargain wrung by such means from his weakness or necessities.

"Leaving out of view entirely the withholding of the vouchers and papers, neither the legal nor moral aspect of the case is changed. It is not the law, nor is it in accordance with my views of sound morals, that where a party has a claim against another of, say, three hundred dollars, who admits that he is justly indebted in the sum of two hundred dollars, but refuses to pay it or any part of it unless the other will agree to relinquish his right to demand the balance. The debt is due; that part is undisputed. The creditor is entitled to it, without any reservation or condition. And where the other exacts and he, to obtain it,

gives a receipt in full for the entire claim, it is neither a release nor a compromise, but simply a promise, made not only without any consideration, but tainted with such illegal and inequitable conduct as renders it inoperative and void. Such, in my opinion, is the character of the receipts set up in those cases. It would be against all law, against all precedents, to sustain this as a compromise, and derogatory to the character of a great and just government, to allow such a state of facts to defeat the just claims of its citizens."

J. M. CARLISLE,
J. D. McPHERSON,
For Appellees.